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December 15, 2003

**VIA FACSIMILE (703) 305-4257**

Charles Steven Brantley  
Petitions Attorney  
Office of Petitions  
2201 South Clark Place  
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Arlington, VA 22202

Re: Application No. 09/641,378  
Reissue of Patent No. 6,053,883  
Original Issue Date: April 25, 2000  
Attorney Docket No. 074309.000014

Dear Examiner Brantley:

Thank you for your telephone message. I look forward to speaking with you. To assist in your analysis, I would like to review the sequence of events and try to address the outstanding issues.

A Reissue Application for U.S. Patent No. 6,053,883 (issued on April 25, 2000) was filed on August 18, 2000. A Notice of Incomplete Application was mailed on January 18, 2002, and identified four deficiencies in the Reissue Application:

1. The reissue application lacked drawings and thus could not be accorded a filing date.
2. The reissue application lacked a declaration signed by the inventor, or in lieu thereof, a petition under 37 CFR 1.47, since it seeks to enlarge the scope of the claims.
3. The reissue application fails to list the country of citizenship, the residential address or a declaration from the inventor.
4. The reissue application failed to include the consent of the assignee.

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In response to the January 18, 2002 Notice, on March 18, 2002, Applicant filed a Petition to Waive the Rules with respect to the Drawings and sought to have the original reissue filing date of August 18, 2000, granted. (Note that Applicant also had a separate filing on March 18, 2002 titled "Response to Notice of Incomplete Application," addressed in more detail below.) The Petition also included a copy of the drawings.

On August 5, 2002, the Office issued a Decision on the Petition in which the Petition was dismissed. The Decision acknowledged that the March 18, 2002 Petition and Drawings had been received. However, the dismissal of the Petition seemed to indicate that the petition would not be considered until Applicant had complied with Items 2-4 from above.

This brings up the first point of confusion. Specifically, Applicant sought to simply to have the drawings accepted and a filing date of August 18, 2000 granted. The original Notice of Incomplete Application stated that a filing date had not been accorded because of the missing drawings. However, since Applicant's Petition included the drawings, it would seem that while Applicant sought to have a filing date of August 18, 2000 assigned, a filing date of no later than March 18, 2002, the date the drawings were filed to complete the application, should have been granted. The Decision on the Petition should have addressed only the issue of the drawings since this was the only issue addressed by the Applicant in the Petition.

The second point of confusion is with regard to the information identified in Items 2-4 and addressed in a Response to Notice of Incomplete Application filed on March 18, 2002 (Note this is a separate filing from the Petition to Waive the Rules also filed on March 18, 2002). Except for the identification of the Inventor's citizenship—the Inventor James Schiek is a U.S. citizen—each of pieces of information identified in the Notice as lacking are present in the original Declaration for Reissue. I would like to take each item in turn and point out where the information in the original Declaration for Reissue is presented:

**Deficiency #2:** The reissue application lacked a declaration signed by the inventor, or in lieu thereof, a petition under 37 CFR 1.47, since it seeks to enlarge the scope of the claims.

**Response:** The original Declaration for Reissue stated in ¶5 that the Inventor refused to join in the application. While the Reissue Application did not specifically include a 37 CFR 1.47 Petition, the Declaration included "proof of pertinent facts" as required in such a Petition and the accompanying Reissue Application authorized the Commissioner to charge a deposit account for any fees necessary under the application. Furthermore, the Response to Notice of Incomplete Application filed on March 18, 2002 included the same "proof of pertinent facts" and authorization to charge a deposit account for any fees arising thereunder.

**Deficiency #3:** The reissue application fails to list the country of citizenship, the residential address or a declaration from the inventor under 37 CFR 1.63.

**Response:** The original Declaration for Reissue identified in ¶6 the residential address of the Inventor. While the Declaration did not identify the Inventor's citizenship, this information has since been provided. The Inventor James W. Schick, Sr. is a citizen of the United States. As to a declaration under 37 CFR 1.63, the Reissue Application reiterated

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several times that the Inventor refused to sign such a declaration, hence the need for a statement under 37 CFR 1.47. Notwithstanding this, the Assignee which filed the Reissue Application did make all of the same assertions required of a declaration under 37 CFR 1.63.

**Deficiency #4:** The reissue application failed to include the consent of the assignee.

**Response:** The original Declaration for Reissue was submitted by the Assignee and thus consent of the Assignee would seem obvious. Specifically in ¶1, the Assignee asserted its ownership of U.S. Patent No. 6,053,883. Furthermore, Assignee included a document entitled "Reissue Application by the Assignee, Offer to Surrender Patent." Thus, the consent of the assignee was clearly present in the original Reissue Application.

Thus, it seems to me that Items 2-4 were not a requirement for consideration of the Petition to Waive the Rules so as to grant a filing date of August 18, 2000. The Petition should have been reviewed only in light of the drawings since the original Notice of Incomplete Application identified only the missing drawings as a requirement for assignment of a filing date. Of course, even if the Petition is denied, the filing date would be no later than March 18, 2002, the date the drawings were filed. This, of course, is within the statutory two year period required of a broadening reissue.

With respect to Items 2-4, each of these has been addressed. However, if it appears that an additional Petition of some type is required or additional information is necessary, Applicant would be happy to provide this information in order to ensure that the Reissue Application gets back on track.

I look forward to speaking with you and resolving these outstanding matters.

Sincerely,



Mark A. Tidwell

MAT:rt